

The American Crossroads: Political Frustration after January 6

URSUS EIJKELENBERG

Five centuries ago, the Italian political philosopher Niccolò Machiavelli noted on state survival that when dealing with a crisis, one needs to ‘return to first principles’ and go back ‘to the starting points.’¹ January 6, 2022, marked the first anniversary of one of the most ground-breaking crises in US democratic history: the Capitol riots. To this day, the search for explanations is in full swing: a Congressional ‘January 6 Committee’ investigates the roles political actors played in inciting the violence;² the FBI is tracking down individual rioters and providing insights into the coordination of the events;³ investigative journalists are revealing critical information about the structured nature of the chaos;⁴ and after increasing pressure, social media behemoths are pledging to investigate their facilitative role — half-heartedly conceding that inadequate content regulation on their platforms was crucial to the outburst of violence.⁵

As these actors and factors take center stage, Machiavelli would interject that little attention is paid to the relation between the civil unrest and the functioning of the political system. The consequence of focusing on exogenous explanations is that the political insurgence is approached as an anomaly in a stable system of democratic governance. This approach discounts the possibility that those tumultuous events hint at systemic defects, which, unless attended to, have the potential of turning anomaly into normalcy, incident into standard, exception into rule.

When the problem of *political frustration* is placed at the heart of the matter, however, systemic analysis becomes inevitable. It brings to light the structural condition of *political impotence* and its relation to the systemically repressed practice of *constitutional politics* as a source of frustration. It takes on the idea that extreme forms of political frustration emerge at rare historical moments when the stakes of politics become existential while the political system is incapable of facilitating an exceptional type of politics. As a result, the experience of impotence intensifies, frustration flourishes, and frustration-based politics like *Trumpism* — even *civil conflict* — becomes a real threat. Whether to abstain from changing the constitutional foundations or, as Machiavelli would suggest, confronting the problem at its ‘starting points’ by moving toward *civic constitutionalism* is the crossroads American democracy approaches.

Political frustration

While the political divide between Republicans and Democrats has grown, they share one important common characteristic: high levels of political frustration. The images

of turbulent and, at times, even violent political manifestations in recent years tell the story of mass frustration on both sides of the political polarity. Frustration, as defined by Oxford Languages, is ‘the feeling of being upset or annoyed as a result of being unable to change or achieve something.’⁶ Translated into political terms, frustration refers to a feeling of powerlessness and hints at a condition of *political impotence*, or ‘the inability to effectively influence and partake in formulating the structures and rules under which one lives.’⁷ Political frustration is a psycho-political effect that surfaces in highly polarized democratic societies in which institutional channels for effective popular-democratic voice and participation are occluded.

A central reason for the climaxing frustration in the US right now is the fundamental importance of the political questions at stake. These questions lead to decisions that will deeply affect the lives of present and future generations. The COVID-19 pandemic demanded immediate as well as long-term strategies while raising the question of who pays what price when. The financial crisis of 2008 and the more recent Coronavirus crisis have each in their own way put a question mark behind globalization as it is. Rising inequalities erode the dominance of market-driven neoliberal economics as the ideal economic approach. The *Black Lives Matter* movement has elevated the issue of racial inequality on the political agenda while *#MeToo* advocates gender equality and justice by challenging patriarchal social norms — the potential judicial overturning of *Roe v. Wade* would reinforce the challenged social norms. Hyper-consumerism, addiction, electoral manipulation, and surveillance potentialities cause concerns about the power of Big Tech and the rise of transparency-driven Dataism as central public philosophy. The Herculean challenge of climate change looms large on the horizon, demanding yet to be decided but most certainly heroic sacrifices — who will sacrifice or be sacrificed? With the rise of these questions, democracy itself is increasingly challenged for being unresponsive, captured by the well-educated meritocratic elite who operate on the basis of a neoliberal corporate and technocratic mindset in which efficiency trumps the public good.

Under these circumstances, politics becomes existential, and the will for politics⁸ amplifies. At those moments, when the desire to perform politically increases while the ability to act politically does not follow suit, problems emerge. At those moments, political subjects are confronted with their impotence, and frustration replaces apathy as the primary political impulse.⁹ To put it differently, the direct confrontation with the feeling of powerlessness provokes frustration

and resentment — or, to use Friedrich Nietzsche’s terminology: *ressentiment* — vis-à-vis the institutions and actors said to produce it.¹⁰ The consequences of political frustration and *ressentiment* are visible in recent US history. When people feel unheard, listening turns into shouting. And when desperate shouts fall on deaf ears, shouting matches turn into games of force. This context of existential and frustration-based politics confronts American democracy with a fundamental choice between two possible routes: the first is to ignore the problem, leading to a negative anti-democratic route of Trumpism and potentially civil conflict. The second approach entails confrontation and constitutes a positive democratic route of civic constitutionalism.

Trumpism and civil conflict

What happens if the problem of political frustration is ignored? Trump happens. Trump is *the* personification of political frustration. His ability to utilize frustration as a source of personalistic political power is arguably his only true quality. In order to do this effectively, he positions himself as a political outsider who fights the establishment in the name of the people, and his promise is as simple as it is populist: to give power back to the people. This version of democratic politics has a strong authoritarian ring to it.¹¹ The mythical People is realized and understood as unity, the People-as-one, a homogeneous and morally defined group with an interior of belonging and an exterior of non-belonging. This interior of ‘right’ or ‘true’ People, as political theorist Nadia Urbinati maintains, is interpreted not to represent the whole, *pars pro toto*, but the authentic part only, *pars pro parte*, in conflict with the excluded outside.¹² The friend-enemy logic underlying these political dynamics is anti-elitist in nature, aimed specifically at politically established powers.¹³ In the US context, as public philosopher Michael Sandel asserts, this can be seen as a class struggle along educational lines, a fight against the hegemony of the meritocratic elite.¹⁴ The true People, moreover, does not act directly; its will is mediated through the medium of the leader who claims to embody and speak for the true People. In other words, the leader fights the establishment to replace it with himself: the true voice of the true People. In doing this, the People-through-leader, as morally deserving of power, undermines power-constraining institutions and aims to occupy the ‘empty place of power’ at the heart of democracy.¹⁵

In *Trumpism*, the leader absorbs the political energies of politically frustrated parts of society by holding out a carrot of re-empowerment to politically impotent and frustrated people. This “democratic” promise rests on an anti-pluralistic, highly exclusionary, enemy-focused, and leader-based majoritarianist understanding of representative democracy. The friend-enemy logic driving it, that is, the People’s perpetual need for an enemy to self-identify, combined with a morally induced will to power, creates fertile ground for rabid socio-political clashes. Trumpism, in short, is a recipe for

civil conflict. As Trump is planning his return to politics and power, the question of a viable alternative becomes pressing.

Constitutional politics

Questions concerning the COVID-19 crisis, climate change, neoliberal economics, Big Tech, globalization, and racial and gender inequalities present non-particularistic challenges. These are political questions of a general and fundamental nature, and their answers have equally fundamental, often multigenerational, ramifications. In this context of exceptional political stakes, an exceptional type of politics becomes imperative. The ordinary political mechanisms of periodic elections in a two-party system fall short in accommodating existential concerns. Attempting to channel enormous and diverse issues through the democratically narrow institution of elections intensifies the experience of impotence and cultivates frustration. That is to say, elections alone cannot and probably should not deal with those fundamental questions — especially in a skewed electoral system that is increasingly constrained by the Republicans’ voter suppression in several states.¹⁶ Instead, when fundamental questions arise, fundamental political action is required: a politics fundamentally different from ordinary politics. To use Bruce Ackerman’s terminology, what emerges is a moment for ‘constitutional politics.’¹⁷

Constitutional politics is an essential aspect of state durability. Niccolò Machiavelli, in *The Discourses*, wrote that ‘those [states] are better constituted and have a longer life whose institutions make frequent renovations possible [...] For it is clearer than daylight that, without renovation, these bodies do not last. The way to renovate them is to reduce them to their starting points.’¹⁸ In a similar vein, Hannah Arendt stressed that ‘the very authority of the American Constitution resides in its inherent capacity to be amended and augmented.’¹⁹ More recently, constitutional law scholar Sanford Levinson, in his book *Our Undemocratic Constitution*, highlighted the political-democratic weakness of the US Constitution and called for constitutional politics in the form of a Second Constitutional Convention.²⁰

While essential for state durability, in terms of practical feasibility, constitutional politics in the US has been dead and buried for quite some time. The near-sacred US Constitution is the most rigid legal document in the democratic world. Since 1789, the Constitution has been amended thirty-three times, only two of which took place during the last fifty years, while the most recent amendment dates back thirty years. The rigidity of the Constitution is created by the amendment procedure established in *Article V*, which regulates the procedures of constitutional politics. The multi-faceted and exceptionally demanding procedure incorporates high minimum thresholds and leaves both the initiation and decisions concerning constitutional amendments exclusively to institutionalized political actors. In addition, and partly due to the onerous amendment requirements, the Supreme Court has self-established its extensive constitutional review

prerogatives, thereby absorbing constitutional politics into the legal realm, away from political-democratic influence, providing the judicial body with an exclusive role in interpreting, explaining and thus changing (or not) the meaning of constitutional provisions.

It is ‘clearer than daylight,’ to quote Machiavelli, that constitutional politics in the US is constitutionally repressed, and the citizen’s voice and participatory spirit are — although nominally channeled through electoral institutions — left to their own devices in an extra-institutional wasteland. The perilous potential of this systemic composition is that extra-institutional political energies, unheard and unable to access the occluded institutional channels of constitutional politics at times of exceptionally high political stakes, are fueled by frustration and *ressentiment* and are prone to transform into anti-systemic energies. As a result, they become a serious disruptive threat to the constitutional democratic order.²¹ The unprecedented attack on a central symbol of American democracy — this can never be qualified as ‘legitimate political discourse’ in a democratic context — made that threat visible to all.²² To defuse the anti-systemic menace and prevent recurring systemic crises, it is imperative, as Machiavelli suggested, to go ‘back to the starting points.’ In order to do this effectively, constitutional politics in the US needs reimagination.

Civic Constitutionalism

What if the time for constitutional politics has come but the given procedures are unfit to facilitate it? A change of procedures is warranted. This change takes the form of a radical and counterintuitive alternative: constitutional politics in a *democratic* form. This approach is radical (Latin: *radix*; root) because it is directed at the state’s foundations. It is counterintuitive because the preceding period of intensified socio-political frustration leads most interpreters away from democratic solutions. As history shows, fearful of the ‘emotionalism’ of people, antidemocratic threats are often met with *nondemocratic* answers.²³ By applying concepts like ‘militant democracy’ — the pre-emptive limitation of democracy as a protective mechanism against perceived antidemocratic adversaries — political power is increasingly displaced to institutions insulated from popular pressure.²⁴ Such a solution, however, fails to get the problem right. The problem here is not a democratic excess, but a deep-rooted democratic deficit. Nondemocratic solutions would exacerbate rather than ameliorate the issue of political impotence and frustration. Although counterintuitive, the sustainable response in a context of high levels of political frustration is more, not less democracy.

In relation to constitutional politics, democratization entails a reformulation of constitutionalism in civic and republican terms. *Civic constitutionalism* is a doctrine of constitutional politics in which the state’s fundamental norms and its choice of direction are open to civic-democratic input. This does not mean to collapse the difference between

ordinary and constitutional politics, as constitutional theorist John E. Finn suggests, but to make the procedures of fundamental constitutional politics open to both periodic re-consideration — what constitutional theorist Joel Colón-Ríos calls ‘weak constitutionalism’ and reconstitutionalization — and to reach beyond the institutionalized political and legal actors to include citizens’ constitutional-political endeavors.²⁵ These are procedures that are citizen- (and lot-) based, inclusive, participatory, deliberative, educative, non-partisan — in short, democratic. Civic constitutionalism, to use the words of socio-legal scholar Paul Blokker, ‘emphasizes possibilities for the democratization of constitutional democracy.’²⁶

Radical problems demand radical solutions. Civic constitutionalism could cool the simmering threat of affective polarization as it rephrases the societal sentiments from ‘us’ versus ‘them’ into a single yet inherently plural ‘we.’ It emphasizes dialogue beyond partisan feuds and platitudes to substantially consider current fundamental problems in terms of the common good — a practice which, by means of sincere involvement and interaction, has civic and educational value in and of itself. It challenges the presidential urge to spend time and effort undoing his or her predecessor’s policies and instead, while still open to change of emphasis through ordinary political procedures, move in a citizens-endorsed general direction. Fundamentally, civic constitutionalism offers a sustainable and open route for the constitutional democratic state, which can always be democratically (re)legitimized. In this way, instead of being repressed, constitutional politics is acknowledged and made accessible, creating channels for civic-democratic participation in those exceptional times when fundamental questions are bound to decide the future of political communities.

At this moment, however, the president has the monumental task to appease and defuse a highly polarized and frustrated society while operating in an equally polarized political arena. He faces the challenge of providing, at the same time, answers to some of the most fundamental questions of our time. In light of this, the absence of critical systemic discussions after January 6 is cause for concern. The unprecedented Capitol crisis has underlined the disruptive potential of political frustration. Whether the issue is ignored or confronted at its ‘starting points’ will be decisive for the durability of the political system. All things considered; it is imperative to acknowledge that civic constitutionalism is far less radical when compared to civil conflict. In this context, American democracy approaches a crossroads. Based on the legend of blues guitarist Tommy Johnson who went to the crossroads and sold his soul to the devil, there is one critical question to be answered: will American democracy do the same?²⁷

URSUS EIJKELENBERG is doctoral candidate at the University of Manchester. He specializes in constitutional law and focuses on the rise of new populism within liberal legal orders. He regularly

contributes to academic and public debates in journals, newspapers, magazines, blogs. For questions: u.eijkelenberg@gmail.com

ENDNOTES

- 1 Niccolò Machiavelli, *The Discourses*, (New York: Penguin Classics, 1983), III-1, 385-386.
- 2 This article has been written, submitted and edited prior to the hearings and findings of the January 6 Committee.
- 3 Mark Hosenball and Sarah N. Lynch, “FBI finds scant evidence us capitol attack was coordinated,” Reuters, August 21, 2021. <https://www.reuters.com/world/us/exclusive-fbi-finds-scant-evidence-us-capitol-attack-was-coordinated-sources-2021-08-20/>
- 4 Dmitriy Khavin e.a. “Day of Rage: How Trump Supporters Took the U.S. Capitol”, *New York Times*, March 23, 2022, [nytimes.com/spotlight/us-capitol-riots-investigations](https://www.nytimes.com/spotlight/us-capitol-riots-investigations)
- 5 Queenie Wong, “Jan. 6 Capitol Hill riot forced social media networks to look at their ugly side,” *Cnet*, January 6, 2022, <https://www.cnet.com/news/jan-6-capitol-hill-riot-forced-social-networks-to-look-at-their-ugly-side/>
- 6 Oxford Language Dictionaries.
- 7 Ursus Eijkelenberg, On Political Impotence: How Liberal Democracy Becomes Militant, and Its Demos Becomes Impotent, *The Critique of Law (Krytyka Prawa)*, Vol. 11 No. 1, (2019): 164.
- 8 In this work, the ‘will to politics’ is used in terms of a political-democratic translation of Friedrich Nietzsche’s ‘will to power’ as a rejection of political apathy.
- 9 For more on the transition from apathy to frustration in relation to the condition of political impotence, see: Eijkelenberg, “On Political Impotence,” 164.
- 10 Friedrich Nietzsche, *On The Genealogy of Morals*, (New York: Penguin Classics 2013), First Essay, § 10-12, 97-113.
- 11 See for a theoretical exploration of the authoritarian potential of democracy in terms of the ‘people as one’ and the ‘empty place of power’ e.g. Claude Lefort, *Democracy and Political Theory*, (Oxford: Polity Press 1988).
- 12 N. Urbinati, *Me the People: How Populism Transforms Democracy*, (Cambridge: Harvard University Press 2019), 48.
- 13 The antagonistic friend/enemy theory has been most influentially developed by the German legal theorist Carl Schmitt. See: Carl Schmitt, *The Concept of the Political*, (Chicago: The University of Chicago Press, 1993).
- 14 M. Sandel, *The Tyranny of Merit: What’s Become of the Common Good?*, (New York: Penguin Books Ltd. 2020).
- 15 Lefort, *Democracy and Political Theory*, 17.
- 16 For a brief outline of voter suppression, see: *Block the Vote: How Politicians are Trying to Block Voters from the Ballot Box*, ACLU, August 18, 2021, <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020/>
- 17 Bruce Ackerman, Constitutional Politics/Constitutional Law, *Yale Law Journal* 99 no. 3, (December 1989).
- 18 Machiavelli, *The Discourses*, III-1, 385.
- 19 Hannah Arendt, *On Revolution*, (New York: Penguin Classics, 2006), 194-195.
- 20 Sanford V. Levinson, *Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It)*, (Oxford: Oxford University Press, 2006).
- 21 This disruptive potential is underlined by German legal theorist Carl Schmitt, who theorized about the power of extra-institutional constituent forces. See: Carl Schmitt, *Constitutional Theory*, (Durham: Duke University Press, 2008).
- 22 The Republican Party officially declared the January 6, 2021, attack on the Capitol as ‘legitimate political discourse’. See: Jonathan Weisman and Reid J. Epstein, “G.O.P. declares Jan. 6 Attack ‘Legitimate Political Discourse,’” *New York Times*, February 4, 2022, <https://www.nytimes.com/2022/02/04/us/politics/republicans-jan-6-cheney-censure.html>. Whereas the grievances and frustration of the protesters could be seen as legitimate, a violent attack cannot be justified or framed as ‘legitimate political discourse’ within a democratic framework.
- 23 For an example of the relation between emotionalism and militant democracy: Andres Sajo, *Militant Democracy and Emotional Politics*, *Constellations* 19, no. 3, (January 2013): 562-574.
- 24 For a brief but critical exploration of militant democracy in the context of liberal constitutionalism, see: Ursus Eijkelenberg, “Black Belt Constitutionalism: Considering “Street fighting” as a Constitutional Essential,” *Int’l J. Const. L. Blog*, Oct. 20, 2018, <http://www.iconnectblog.com/2018/10/black-belt-constitutionalism-considering-street-fighting-as-a-constitutional-essential>
- 25 For John E. Finn’s account on Civic constitutionalism, see: John E. Finn, “Some Notes on Inclusive Constitution-Making, Citizenship, and Civic Constitutionalism,” in: *Handbook of Comparative Constitutional Theory*, (Cheltenham: Edward Elgar Publishing, 2018), 436-455. For the notion of weak constitutionalism, see: Joel Colon-Rios, *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power*, (Abingdon: Routledge, 2012).
- 26 Paul Blokker, *New Democracies in Crisis? A Comparative Constitutional Study of the Czech Republic, Hungary, Poland, Romania and Slovakia*, (Abingdon: Routledge, 2014), 10.
- 27 For Robert Johnson’s rendition of the ‘Cross Road Blues’: https://www.youtube.com/watch?v=Gsb_cGdGPTo